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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. .....

UNITED MINE WORKERS OF AMERICA,
Petitioner

v.

TENNESSEE CONSOLIDATED COAL COMPANY
and GRUNDY MINING COMPANY,
Respondents

ON PETITION FOR CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

OPINIONS BELOW

Petitioner correctly shows that the Sixth Circuit's Opinion sustaining the jury verdict and judgment below is reported in 416 F.2d 1192. Also the District Court's Opinion sustaining the jury verdict on post trial motions appears in the record appendix at page 102, et seq.

JURISDICTIONAL GROUNDS

The jurisdictional grounds are correctly shown in the Petition. This is a Sherman Act case based on 15 U.S.C., Section 15.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Under the principles pronounced in *UMW v. Pennington*, 381 U.S. 657, did the Sixth Circuit and the District Court properly hold there was substantial evidence to support the verdict of the jury?

2. Did the Sixth Circuit and the District Court properly hold that the meaning of the Protective Wage Clause (PWC) was for the jury to determine?

3. Did the Sixth Circuit and the District Court properly hold that the effects and consequences of the conduct of the alleged conspirators was evidence that could be considered on the question of conspiracy?

4. Did the Sixth Circuit properly hold that the District Court's instructions on the applicable standard of proof did not constitute prejudicial error?

5. Did the Sixth Circuit err in approving the District Court's jury charge regarding:

(a) the applicable standard of proof,

(b) effects and consequences of acts of alleged conspirators,

(c) jury determination of the Protective Wage Clause's meaning and validity, and

(d) specific intent.

6. Were the Sixth Circuit and the District Court correct in rejecting Petitioner's post-trial contention that

the jury's finding under Special Issue 2 should be given the construction urged by Petitioner after the trial so as to extend it beyond the scope of the two other special issues, and bring it in such conflict with the General Verdict as to supplant the General Verdict and require reversal?

7. Did the Sixth Circuit properly hold that the damages awarded in the District Court was supported by substantial evidence?

8. Did the Sixth Circuit and the District Court properly overrule Petitioner's challenge of the jury panel?

COUNTERSTATEMENT OF THE CASE

A. The Kind of Action.

This suit seeks to recover damages suffered in the period 1960 through 1963 (4-5) by plaintiffs resulting from alleged Sherman Act conspiracy. The Pre-Trial Order (40-52) contains the plaintiffs' theory of conspiracy in detail.

Briefly, and as pointed out at the beginning of the opinion of the Court of Appeals, the plaintiffs charged that UMW and large coal companies who formed the Bituminous Coal Operators Association (BCOA) in 1950 engaged in an unlawful conspiracy in the period of this case (1960-1963) to eliminate and suppress competition and production in the coal industry and to control the Southern Appalachian and Southeastern Tennessee coal fields. The plan of the conspiracy was that only the coal operators who signed and complied with the National Bituminous Coal Wage Agreement of 1950 as amended, including the 1958 Supplement containing the Protective Wage Clause (PWC), would be permitted to carry on operations. It was alleged that

the smaller companies or companies not operating in ideal working conditions could not operate profitably under the provisions of the National Agreement; that those who did not sign were not permitted to operate, and were forced out of business; and that plaintiffs were damaged as a result of the conspiracy. It was further charged that UMW was not only operating as a labor union in this case but also had invested $25,000,000 in acquiring control of West Kentucky Coal Company and its subsidiary, Nashville Coal Company, which was one of the largest competitors on the big TVA coal market, and that UMW loans were used for operational expenses, including payments into UMW's pension fund to enable the union-owned companies to comply with the national contract while competing for the low priced TVA contracts. Plaintiffs further contend that bids made to the Tennessee Valley Authority in the late 1950's and subsequent years for coal contracts by the union-owned companies were at prices below the prices charged in their other markets and in instances were below cost. This predatory bidding aided by UMW financing was going on at the same time that UMW had the Southeastern Tennessee coal field largely closed down for not signing the national contract whose terms were made all the more impossible by such bidding and financing practices. As a result the plaintiffs lost contracts in the TVA market upon which market they were dependent, and the union-owned companies quadrupled their share in that market.

UMW denied that it engaged in any conspiracy. It asserted that all it did was to engage in traditional union activities to promote uniform wages in the coal industry for the betterment of its members.

B. The Rules for This Case Were Settled by This Court in *Pennington*; The Verdict and Judgment

The opinion of this Court in *UMWA v. Pennington*, 381 U.S. 657, bears directly upon the issues in this case and the *Pennington* opinion was instrumental in the drafting of the verdict form. The verdict form is set forth at the beginning of the Sixth Circuit opinion. The following language from the opinion of this Court in *Pennington* was of particular significance:

> "We have said that a union may make wage agreements with a multi-employer bargaining unit and may in pursuance of its own union interests seek to obtain the same terms from other employers. No case under the antitrust laws could be made out on evidence limited to such union behavior.[2] But we think a union forfeits its exemption from the antitrust laws when it is clearly shown that it has agreed with one set of employers to impose a certain wage scale on other bargaining units. One group of employers may not conspire to eliminate competitors from the industry and the union is liable with the employers if it becomes a party to the conspiracy. This is true even though the union's part in the scheme is an undertaking to secure the same wages, hours or other conditions of employment from the remaining employers in the industry." (*Id.* at 665-666).

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2 "Unilaterally, and without agreement with any employer group to do so, a union may adopt a uniform wage policy and seek vigorously to implement it even though it may suspect that some employers cannot effectively compete if they are required to pay the wage scale demanded by the union. The union need not gear its wage demands to wages which the weakest units in the industry can afford to pay. Such union conduct is not alone sufficient evidence to maintain a union-employer conspiracy charge under the Sherman Act. There must be additional direct or indirect evidence of the conspiracy. There was, of course, other evidence in this case, but we indicate no opinion as to its sufficiency."

The parties agreed on the General Verdict Form. It was only to the insertion by the Court on its own motion of a Special Issues Form that UMW objected. UMW wanted only the General Verdict Form. (9-11, Second Supplement to Joint Appendix).

After having objected to the submission of special issues to the jury, UMW sought in post-trial motions to stretch the finding under Special Issue No. 2 (that UMW had not agreed before PWC in 1958 to impose the national contract in every unit) into being the General Verdict on all phases of conspiracy for the entire case as though that one special issue covered the whole subject of liability under the Sherman Act except for the one remaining question of the meaning of PWC. The Court clearly did not so intend, and it was the Court that got up the special issues, having received no affirmative response from plaintiffs and objections from defendant to the submission of any special issues.

The Court's thoughts on this are at 7-8, Second Supplement to the Joint Appendix:

> "THE COURT: Well, personally, I don't want to have to try this case over if I can avoid it. Well, I do not have any special issues worked out as yet, but I am still inclined to think that we had better ask some special issues.
>
> "For example, I am inclined to think that we ought to have a special issue on whether or not West Kentucky Coal Company did engage in predatory pricing of coal on the TVA market. I am inclined to think we ought to have a special issue on whether or not the protective wage clause would of itself forfeit the union's exemption, and there are perhaps one or two others that would be helpful to submit, but if I do it I will have those before we start the argument in the morning."

But the Court's special issues were not ready at the time for argument and, by agreement of counsel, argument proceeded with agreement that special issues could be completed after the argument subject to UMW's objection to submission of any special issues. (10-11, Second Supplement to Joint Appendix).

It is obvious that no one conceived that the General Verdict was to be superseded by Special Issue 2 on the broad question of conspiracy or that the General Verdict was limited to the issue of the meaning of PWC but included other asserted phases of conspiracy.

Under the General Verdict the jury found UMW did engage in a conspiracy to restrain trade as charged by plaintiffs. Under the first special issue it found UMW had lost its exemption under Sherman; under the second special issue the jury concluded that UMW did not agree to apply the national contract to every bargaining unit before PWC; but under the third special issue the jury found that by PWC in 1958 it was intended that UMW be bound to impose the national contract in all units.

The jury found damages of $977,500 for Tennessee Consolidated (TCC) and $22,500 for Grundy.

UMW then filed a motion for judgment notwithstanding the verdict and in the alternative for a new trial which the District Court carefully considered in an opinion appearing on 41 pages of the appendix (102-143).

The District Court found that the damages in the amount of $977,500 awarded to TCC by the jury were excessive and suggested a remittitur of $500,000, which was accepted by TCC. The Court then denied the motion for judgment notwithstanding the verdict and the motion for a new trial, and entered judgment in favor of TCC against UMW

in the amount of $1,432,500 and in favor of Grundy in the amount of $67,500, being three times the amount of actual damages sustained by them. The Court allowed $150,000 attorneys fees to counsel for plaintiffs.

C. The Sixth Circuit Agreed with the District Court that Substantial Evidence Supported the Jury Verdict and There was no Prejudicial Error.

In the body of its opinion under the heading "Sufficiency of the Evidence" the Sixth Circuit agreed with the District Court that there was substantial evidence to support the verdict of the jury that UMW did conspire as charged.

The Sixth Circuit also agreed that the meaning of PWC was properly submitted to the jury and there was substantial evidence to support the jury's finding under Special Issue 3 as to that meaning.

The Sixth Circuit went on to find there was no prejudicial error below and the amount of damages awarded was proper. The Sixth Circuit did observe as to the jury instructions:

> "The plaintiffs might well have objected to the court's over-emphasizing the defendant's theory of the case, but in view of the verdict in their favor they were not prejudiced."

D. Reliance of the Petition Upon the Affirmance of the Judgment for UMW by the Equally Divided Sixth Circuit in the Non-Jury Case, Ramsey v. UMW, is Unfounded; While the Records in the Two Cases are Similar, the Questions on Appeal are Entirely Different and the Unanimous Three Judge Opinion of the Sixth Circuit in This Case Was by Two Judges on UMW's Side in Ramsey.

The petition refers to, and relies upon *Ramsey, et al v. United Mine Workers*, decided about the same time as this case by the Sixth Circuit sitting in banc in a four to four decision. A three-judge panel which heard the argument in that case had decided, two to one and with a dissenting opinion, to reverse a judgment in favor of UMW entered by the District Court sitting without a jury. Then on UMW's petition to rehear in banc, and without any answer to the petition or any further argument, the Court of Appeals divided four to four and reinstated the District Court's judgment.

The Trial Judge in that case had found the preponderance of evidence supported the charge of illegal combination and agreement by UMW, but not "clear, unequivocal and convincing" proof under Norris-LaGuardia Act's Section 6.

The *Ramsey* case was a problem to the Sixth Circuit because the finder of fact, the Trial Judge, found difficulty in deciding ultimate factual issues or issues of mixed law and fact one way or the other, the Trial Judge having held the case under advisement for sixteen and a half months. The problem in that case had to do with what stage of the fact finding process should the clear proof rule be applied—should it be applied at the ultimate law and fact question or conclusion of conspiracy or no conspiracy, as well as on questions of authorization and agency, as UMW contended and as the Trial Court finally held. The Trial Court followed UMW's theory on this.

But the case at bar was decided in the same Trial Court by a jury after a charge based on the same UMW theory, and it is manifest that there was substantial evidence to support the verdict as the Trial Court and the unanimous Court of Appeals held in this case.

The Trial Court in its jury charge in this case went considerably beyond what the law makes necessary to satisfy the demands of UMW for charges of its theories. The Court of Appeals remarked about this. The charge actually called repeatedly for a finding of clear, unequivocal and convincing proof on the ultimate conclusion as to the illegal combination and agreement charged, in addition to clear proof of authorization or ratification of the clearly proven acts and activities of UMW's international officers which were relied on by plaintiff as indicating agreement and conspiracy.

No question could possibly be raised in any later petition in this Court in *Ramsey* that would help UMW's position in this case. The relief to which these plaintiffs are so clearly entitled should not be delayed.

COUNTERSTATEMENT OF FACTS

The petition does not give a reasonably accurate presentation of what happened in the coal industry, either nationally or in Southern Tennessee. It would be unfortunate if this Court took this case on the assumption that the facts were as presented in the petition, only to find on going deep into this complex record that it was mistaken in that assumption. Unfortunately in such a case as this the requirement that the parties be brief and concise in responding to a petition gives no good opportunity to set the record perfectly straight, but we can at least put the scope of the proof presented to the jury into a little better focus:

A. UMW Abandoned Its Basic Policies After 1950 When BCOA Was Established; Since Then UMW Has Cooperated in Fulfilling the Purposes of the Major Com-

bines in Not Allowing Production that Did Not Pay the Terms Negotiated by the Major Combines; Tightening Up of the Understandings in the PWC of 1958.

Before 1950 the basic policies of the union were to represent *all* and not just a small part of its members with the accompanying policy of seeking equality of working opportunity for all of the members. There was the companion policy of recognizing the need for competitive equality among producers. (306-7, 312, 344-6, 349-50, 352-3, 959-61).

The coal industry is made up of many "collective bargaining units." Before 1950, as the principal representative of the northern part of the industry in negotiating with UMW, the head of the largest company, Consolidation Coal Company (Consol), claimed that he was governed by conflicting policies. He had a purpose that his company's wage costs should not be higher than the competitors in the industry. There was the conflicting policy of recognizing at that time the interests of hundreds of smaller coal companies who then had their backs to the wall, a policy of responsible concern for those who were affected by the negotiations but whose conditions would not permit them to keep pace with Consol on wage costs. (617-21, 1516-18).

There was a crisis with the drop off in demand in the post-war years of 1949-50 and also in this period there was increasing competition from gas and oil. On both the labor side and the industry side there were discussions as to how to stabilize the industry. The industry leaders talked of setting up a czar in the person of Harry Moses (1075-6). The union urged a production control plan such as had been established in the anthracite industry (352-3). It is obvious that the czar plan won after 1950

with the establishment of BCOA under Harry Moses. Moses said as much in a talk that was recorded in the union official journal and distributed to the members (385-8).

It was only by the surrender of the concern for fair treatment of all members and abandonment of the truly responsible policies mentioned above that the union could release the brakes and plunge headlong down the road of pure and complete uniformity—the road that has benefited such companies as Consol so very much and has been so disastrous to the lesser companies and to the great majority of union members who found there were no terms allowed which were practical in the places and conditions where they found themselves.

Since BCOA was formed in 1950, UMW has worked in concert with the purpose of major companies to have the national contract terms including repeated flat increases applied to all companies (376-82, 1923-7). Under BCOA a new bargaining technique was formed. A two-man bargaining team worked out this series of flat, across-the-board, wage increases (376-80, 385-8). Other bargaining units lost their freedom and become automatically subject to the BCOA contracts (1480-6). These increases were tailored to fit ever-increasing mechanization (388-9).

A mechanical revolution occurred after 1950 under a contract tailored to the latest machines. Men were replaced by machines and unemployment became rampant. Coal communities and areas where mechanization was difficult became blighted (196-9, 389-92, 1530, 1975).

Protests of union members in the conventions of the union about the policy which was forcing so many out of jobs went unheeded by union officers. One delegate pointed out there were 291 local resolutions asking for

wage classification and only 90 asking for general wage increases. Yet, with convention approval, the flat blanket wage increases went on (394-404).

The differentials in wages which were the policy of the union before the 1940's were fair and equitable but the flat increases across the board since 1949 are extremely unfair. It is obvious that there is complete economic regulation of the industry by allowance of flat increases applicable to every job, regardless of its nature, in an industry like coal. The labor law and the *Pennington* opinion of this Court do not authorize this type of labor contracting without bargaining. The authorities require bargaining unit by unit.

The unfairness and the unreasonableness of this situation is just as plain as the comparison of the 115 cubic-yard shovels usable in some coalfields (389, 607) run by a handful of men that can produce trainloads of coal in a day, with the underground pick and shovel miners necessary in some of the narrower segments of coal in the fingers of the plateau of Southern Tennessee (176), or a comparison of the ease with which big continuous miners can be used in the thick and regular Pittsburg seam (390-1) with the difficulties of adapting even the smallest of machinery in the thin and irregular Sewanee seam of Southern Tennessee (172). When companies replaced many men with a few big machines, flat increasing wage scales mean very little to them.

Whole communities, whole areas of the country for many decades have been dependent upon all these varying conditions of mining. So when a combination moves in to say that everybody will conform to a contract tailored to fit the constantly improving techniques used by those in the most favored conditions, that combination is con-

demning to "blight" (see *Ramsey v. UMW*, 265 F. Supp. 428) and death the economy of whole regions and sentencing the population of those areas to unemployment. This is exactly what has happened to a great part of the regions of the coal industry, while other regions of the industry never had it so good. This is why the older system of differentials was fair. This is why the system of flat, blanket across-the-board wage increases constantly applied is so unfair and why it becomes more and more unfair the higher it gets. This is why there has been a mechanical revolution in coal with a fantastic increase in productivity per man per day with a consistent enormous drop in the number of jobs and mass unemployment (196-9, 1530, 1975).

There was a recession in coal in 1958 and the Protective Wage Clause (PWC) was added to the National Bituminous Coal Wage Agreement to tighten the screws of the UMW-BCOA combination. Many of the UMW representatives out in the field had friends who wanted to work, and there was the responsibility of getting contracts signed in impossible situations. Unquestionably there was considerable "sweethearting," tacit deals between local producers and UMW field representatives that the printed and signed contract was a sham to get the field representative off the hook, and that the arrangement of terms by the local producer with his own men would suffice. In many localities the UMW field man is the UMW. This became so pronounced among the small truck mines of Southern Tennessee (not by these plaintiffs) that UMW district officers had to come down in 1955 to make a special kind of arrangement over the whole field to let the sweetheart deals stand "for old business", but to enforce welfare obligations under the contracts with respect to coal under "future coal contracts." This is discussed later.

Mr. Moody, head of the Southern Coal Producers Association, in 1958 consulted with the midwest associations about a proposed form of the PWC. Also BCOA and UMW were exchanging drafts of the PWC (1490-1, 1938-40). The operator associations were demanding commitments from UMW to eliminate the possibility of the local companies out in the field escaping the contract terms. UMW counsel characterized the resulting PWC as a "quid pro quo." Operators demanded the UMW promise contained in Paragraph A. UMW demanded the operator promise contained in Paragraph B (1078).

The PWC is set forth in the Appendix (1931-7).

The men who were responsible for this clause being inserted in the contract, the three heads of the major associations and the three international union officers, formed the Joint Industry Contract Committee to police the clause throughout the industry. This committee sent out demands to all the companies who had contracts with the union that they send back certification of compliance; that is, that they were paying the national contract scale and welfare royalty and had "complied fully with the other provisions of the national agreement." *These demands were sent out to every company who had any kind of contract with the union.* Hundreds of companies did not send back the certifications, and, after a second letter of warning, formal determinations and blacklistings were made and recorded of violation of the Protective Wage Clause on the part of 1328 coal operators across the country (418-9, 423-4, 467-8, 470-1).

At this point it is well to observe the effect of a decade of the application of the UMW-BCOA national contracts. We have already commented upon the rampant unemployment. On the employer or management side, in the year

1959, the combined corporate industry excluding the two largest companies (Consol and Peabody Coal Company) suffered a $12,467,613 loss while paying $105,209,688 simply as welfare fringe benefits under the national contracts. That same year the said two largest companies had combined net profits of $43,039,613 (1527-8). The share of national coal production enjoyed by the big mines (Class I mines producing 500,000 tons or more annually) had substantially improved. In 1947 this percentage had been 41.5; in 1948 it dropped to 38; in 1949 it fell to 29.3. But by 1959 it had climed to 49.9.

B. Effects of the UMW-BCOA Combination on the Southern Tennessee Coalfield.

The Southern Tennessee coalfield is known as the Sewanee seam. The coal averages 36 inches in thickness and is extremely irregular in thickness. There are rolls and squeezes in the rock surrounding the coal. Newly developed mining machinery generally comes out in sizes suitable for thicker and regular seams of coal and it is not until much later that prototypes are developed for thinner seams such as the Sewanee seam. A sand-rock conglomerate in the roof over the Sewanee seam makes it difficult to roof bolt and maintain roof control. All of these things created difficulties in mechanization and attaining a high rate of productivity (156-172).

By far the largest market for Southern Tennessee coal companies is the TVA steam plant system. Southern Tennessee competes with the West Kentucky field for this market. With respect to this competition a witness for the union testified in this case:

"The important difference between the two fields is not therefore in wages and benefits the workers receive,

but rather in the difference in productivity ... A Southern Tennessee miner produces ten tons per day and a Western Kentucky miner twenty tons. On this basis the labor cost on a ton of Tennessee coal is about twice as high, perhaps as much as $2.50 a ton versus $1.25 plus $.40 in each case for the UMW welfare fund. Such a difference is indeed a serious matter to the Southern Tennessee producers, especially as wages increase." (1457)

This statement of facts has already become lengthy and in order to shorten this statement we turn now to a summary of the effects of the UMW-BCOA contract in Southern Tennessee as made by the same Trial Court in another case (*Ramsey v. UMWA*), which case had substantially the same record as this case (114). In *Ramsey* the Trial Court made the following conclusions:

"Upon review of the evidence as it relates to the Southeastern Tennessee coal field and of the U.M.W.'s activities therein, the following conclusions appear to be clearly supported by the evidence:

"(1) To operate successfully the producers in the Southeastern Tennessee coal field must be able to compete and survive on the T.V.A. coal market. Since 1954 50% or more of all coal produced in the State of Tennessee has had to find its market with the T.V.A. That figure reached as high as 78% in 1956 and by 1962 was still at 64.3%.

"(2) Due to the geological conditions, the Southeastern Tennessee coal field cannot achieve a level of productivity equivalent to that of its principal competitors on the T.V.A. coal market. This competitive disadvantage is offset in part by the transportation and

quality advantages which the field has over its principal competitors in the T.V.A. market at the Widow's Creek steam plant.

"(3) In the period since 1960 the coal operators in the Southeastern Tennessee coal field have been unable to compete and survive in the T.V.A. coal market under the National Bituminous Coal Wage Agreement. While in many instances this appears to have been due to antiquated mining methods and equipment or other causes, the fact nevertheless remains that since 1960 there has not been a single instance of a successful coal mining operation in the Southeastern Tennessee coal field under the National Bituminous Coal Wage Agreement and this in spite of the fact that the only feasible alternative facing most coal operators in the area was to operate under the national contract or go out of business." (*Ramsey v. UMWA*, 265 F. Supp. 388, 430)

So the UMW-BCOA contracts were impossible in Southern Tennessee and in 1962 these contracts were cancelled across the field. The operators offered terms with differentials based on the type of mining conditions and mechanization for each mine and UMW refused every offer but would take only the national contract (434-5, 696-8, 1106-10). An unending strike began. Concerning this strike the *Ramsey* opinion says this:

"The failure to reach a contract was the overriding reason, however. While it does not appear that the U.M.W. called the strike, it is clear that it sanctioned and approved the strike.

"The strike, which commenced on December 26, 1962, was accompanied by mass picketing at the road junctions leading to the major mine areas in the field.

This strike was still continuing in 1965 at the time that proof was taken for this trial. The U.M.W. has continued support of the strikers by relief payments. Grundy Mining Company did not operate again until October 8, 1963, although it attempted to open in May of 1963 but was prevented from doing so by mass picketing. By February of 1963 all mines on Tennessee Products property had ceased operation due to the strike. No mining on these properties had been resumed by 1965. A great deal of violence, bloodshed and destruction of property has accompanied the strike. Much suffering, deprivation and want has occurred. The Southeastern Tennessee coal field remains a blighted area.

* * *

"With respect to the strike which occurred on December 26, 1963, and which has been in effect since that date, the evidence is clear that the U.M.W. has sanctioned and approved the strike. The Union concedes as much. It is likewise clear that the strike has been accompanied by much mass picketing, violence and property destruction. Both sides in the dispute have suffered the effects of such violence, but the operators and those miners who sought to cross the picket lines have suffered much the worse of the violence. Without attempting to itemize the record, it may be said that homes were shot into, burned or dynamited by unidentified assailants. Coal was dumped upon the highway. Trucks and cars were fired upon numerous times. Power poles and mine equipment were dynamited. Coal tipples were burned and mine guards were fired upon. Operators were forced to abandon their mines and equipment for reasons of personal safety, with the mines and equipment suffering

heavy losses from mine flooding and vandalism. Several men were killed. One intrepid operator was the intended victim of dynamite thrown into his yard from a speeding car, but he seized the lethal bundle and removed the cap just seconds before it went off. While it certainly adds no luster to the occasion, there were victims to violence upon both sides. The home of the U.M.W. District Representative was damaged by dynamite. Four local union halls were burned. Union men were shot at and union homes were burned." (*Ramsey v. UMWA*, 265 F. Supp. 388, 428-9)

C. The Interest of UMW as an Investor and Owner in the Competition Between Southern Tennessee and West Kentucky.

UMW began buying West Kentucky Coal Company stock in 1952 and by 1958 had possession of over half of the voting stock (508-11, 554-6, 1954). The peculiarities of the transactions whereby these interests were acquired are dealt with in the testimony of Mr. Cyrus Eaton (522, et seq.) and Mr. Barnum L. Colton (540, et seq.).

Mr. Lewis testified that UMW "was conscious of the intrinsic value of the West Kentucky coal stock and familiar with its reserve assets ... It had over a billion tons of reserve coal adjacent to the river, strategically located in the center of the steam coal consuming market at the present and in the future." (937)

Profits to be made from these investments were to be split by UMW and Mr. Eaton, fifty per cent to each (936).

The union-owned companies were able to triple their share of the TVA business in the period from 1958 to 1964 (1961).

In this period UMW was bidding for and contracting with TVA to sell the coal at prices far below the prices that West Kentucky and its subsidiary in Nashville charged for coal in the other markets (593-5).

While this competitive struggle was going on the union came to the aid of its companies, West Kentucky and Nashville, with loans of $900,000 to enable them to pay for welfare fund obligations under the National Bituminous Coal Wage Agreement (1660).

D. The History of Plaintiffs Through the Period of Strife, Strikes and Damages — 1960 Through 1963.

Because of its losses and failures in trying to raise productivity with heavy expenditures for the latest and best machinery usable in its coal seams, at the beginning of 1960, TCC cancelled its UMW contract effective in March, 1960. The mine continued to operate on limited business, until work stopped on the effective date of the cancellation in March, 1960 (206a-207a). In the meantime, a series of meetings were held in Knoxville, Chattanooga and Palmer, Tennessee, between the company and representatives of the Union. The company displayed its financial situation and appealed to the union to modify the national contract terms so that wages could be paid on some form of incentive basis, or determined on the basis of productivity, so that wages would be lower than UMW scale for low productivity, but higher if productivity were high enough. The upshot was complete rejection by the union and demand for the national contract (207a-213a, 688a-691a).

Having no hopes for reopening Coal Valley, Tennessee Consolidated turned to its newly created subsidiary, the plaintiff, Grundy. Grundy then in 1960, after the failure

of Tennessee Consolidated's efforts to negotiate a contract, turned to Paul Gibbs, and he attempted to start with new men without a UMW contract. This brought on a real uproar that is dealt with in *Gibbs v. United Mine Workers*, 383 U.S. 715. That suit was based on violence. This effort ended in failure.

By this time, the Bee Branch and Floyd Hollow TVA contracts of the truck mines on TCC property expired and in the ensuing turmoil and lengthy picketing there was no new business for the truck mines (448a).

Now in August, 1960, the squeeze that Southern Tennessee found itself in was tightened with a new and greatly reduced Section 22 all rail rate from Western Kentucky direct to Widow's Creek. So starting in the fall of 1960 the price ceiling over the principal market was a very concrete fixture, as even UMW's principal witness on this subject finally had to agree after a great deal of hedging. This was in the middle of the period when West Kentucky Coal Company (with loans from UMW to enable it to pay its welfare royalties) increased its share of TVA business from about one million to four million tons per year (1461a-1469a, 1961a). Two times in testimony in this case the President of that Company took credit for getting the new Section 22 rate to Widow's Creek (566a, 1337a-1338a). The tremendous increase of shipments of that company to TVA were all at a $2.90 FOB mine price. This was the lowest of the company's prices in this period, considering all of its large contracts, including many other utility contracts, even those for carbon and screenings (592a-593a, 1260a-1264a). Most of its other sales were very substantially above $2.90. Previous efforts at getting at West Kentucky's cost figures were blocked (588a-589a). But at the trial of this case it strongly appears figures of cost of the TVA coal could not be substantiated and the

attempt to establish a profit for it results in the odd claim that all the company mines selling the high priced coal were losing money and the two mines largely devoted to TVA business at the lowest price were making money (1300a, 1303a-1304a). But regardless of actual cost, and regardless of prior decisions of the Trial Judges in *Second Pennington* and *Ramsey* about there being no "predtory pricing," there was a ceiling set low enough for Southern Tennessee to leave no room to operate on top of the high cost floor of UMW's national contract. It was UMW's company that actually got the advantage of additional business when UMW refused to adjust that floor.

The fall of 1960 rolled around in Southern Tennessee with still no production. Management was under the injunction of the stockholders not to exhaust the mineral and financial assets of the company with further heavy losses (216a). But the outlook was darker because the reduced rail rate from West Kentucky to Widow's Creek market became effective in the fall of 1960.

The Company appealed directly to its old Coal Valley employees rather than through their union, to come to work at real good wages but not UMW scale. Production still was impossible although many were interested (216a-219a).

It is to be observed, as UMW points out, that the company had been criticized, not only by UMW, but by TVA, on the general ground that low productivity could only be the result of poor management. So Tennessee Consolidated, in early 1961, went out and got the best managers in the business—Allen & Garcia Company, to see if it could operate in Southern Tennessee *under the UMW contract* (219a).

Allen & Garcia is *the* outstanding coal mine construction and operating firm in the industry. The appendix gives a picture of the truly extraordinary qualifications and experience of this company all over the world (732a-737a).

Allen & Garcia was employed on the basis that TCC would be responsible for the cost and expense of operations and Allen & Garcia would plan and supervise operations and be paid a commission on coal produced (745a). Allen & Garcia was acting as agent for TCC (748a).

On the recommendations of Allen & Garcia, TCC spent another $475,000 for new mining equipment (643a).

TCC now, at the December 7, 1961, TVA bid opening, put in bids to TVA for two contracts, one for the large mine being put into operation by Allen & Garcia, and one for the truck mines. The computation of bid prices in these bids reflect how important was the ceiling imposed by the West Kentucky Coal Company series of bids. In February, 1961, West Kentucky had filed a bid for a million tons a year for 10 years to TVA at $2.90, giving TVA an option to take an additional million tons. TVA had taken the first million of this offer and in December, 1961, the option for the second million was still dangling. (TVA elected to take this option tonnage December 28, 1961) (583a-586a).

So for the December, 1961, bid TCC officers had to compute their bids strictly on the basis of getting as close to, but under, the West Kentucky option tonnage bid as possible. This is what they did and the two bids were successful (699a-703a, 872a-877a).

We have commented above upon the excellent reputation and experience of Allen & Garcia all over the world. But

in this Southern Tennessee venture, it failed dismally, trying to operate under the National Bituminous Coal Wage Agreement.

The reasons are two: FIRST, the irregular and treacherous natural conditions in the seam of coal, the day to day experiences in which Allen & Garcia had encountered nowhere else; and, SECOND, the clamor of the men (mostly up in years) on the old Coal Valley panel for jobs on the new and fast, mobile machinery, regardless of age and ability to be trained (638a-642a, 679a-681a, 745a-746a, 749a, 755a). But there was no chance to comply with the national contract unless this kind of machinery could be used.

This is precisely the problem that stems directly from trying to design bargaining units or units of production around a national contract dictated from outside, rather than bargaining for terms that fit the unit so that both the company and its employees can live with each other, as contemplated in the Labor Relations Act.

In August and September, 1962, the operations under Allen & Garcia were in turmoil with picket lines stationed at mine entrances and in September, 1962, Allen & Garcia cancelled the UMW contract and resigned from the operation (450a, 672a-673a, 739a-740a).

TCC again attempted to carry on with Grundy acting as operating agent. At this same time the truck mines were closed because UMW cancelled its contracts with those mines and the Welfare Fund withdrew welfare cards from the men (433a-434a, 454a-455a).

When Grundy took over in October, 1962, UMW filed a petition for representation election for the Grundy mine. At a meeting in Nashville the company advised the union

that the union would have to make some changes (1092a), and later advised UMW by letter that when UMW was certified as bargaining agent at Grundy's mine, the company's representative in negotiations would be Sewanee Coal Operators Association (1093a).

The Sewanee Association was composed of a number of truck mine operators and TCC and Grundy were "qualified" members (709a). In the "negotiations" of this Association with UMW, TCC loaned its vice-president and secretary, Mr. Houston Beaumont, a lawyer. One of the classes of mines for which terms were proposed covered the Grundy mine, No. 11. At these negotiations, in a series of four meetings, October, 1962 to January, 1963, the operators made concrete proposals of terms varying with the different kind of mines and operating methods used in the field. UMW's response was to say it would take 10 cents more an hour wage and 10 cents more per ton welfare than the national contract, finally saying it would take the national contract (434a-435a, 696a-698a, 1106a-1110a).

These "negotiations" failed and the UMW district president wrote a letter to TCC demanding the national contract, accusing TCC of trying to "sweetheart" and carrying on "vicious" conduct in attempting to negotiate labor costs below those its competitors had to pay (1111a-1114a). The competitor who had put the ceiling on the market was the company owned by UMW to whom UMW was loaning $900,000 so it could pay its welfare obligations.

December 26, 1962, pickets in the hundreds closed the mines (435a, 451a). The UMW district field representative was at the picket line (436a-437a). The unending strike began. There can be no doubt that the District Court in *Ramsey* was right in finding that the "blighted"

condition that came then to this three-county area was from failure of efforts to reach a contract, and the Court correctly characterizes the almost open warfare and destruction that ensued. (See 265 F. Supp. 428-429).

These things were still going on at the end of the damage period in this case (December 31, 1963) with UMW writing editorials encouraging the strikers and paying the men for not working, with funds from the international treasury (286a-288a, 762a, 860a-869a).

As a direct result of these things, TCC and Grundy were injured in their business and property.

ARGUMENT

I. There Is No Substantial Federal Question Presented By The Petition That Was Not Answered By This Court in *UMW v. Pennington*.

The answer to the question of the scope and effect of the antitrust law and the labor law on an industrywide contracting combination of union and business groups was given by this Court in *UMW v. Pennington*, 381 U.S. 657. Congress has not acted in this field since that time and there is no reason as far as this case is concerned for the Court to review the propositions enunciated in that opinion.

A. There Was Substantial Evidence to Support the Jury Verdict as Held by the Sixth Circuit and the District Court.

Our Counterstatement of Facts above, and the opinions of the courts below, must be our answer to UMW's proposition that the verdict was not supported by substantial

evidence. It would amount to detailed repetition to go over those facts again. There was an abundance of evidence to support a finding of violation under the opinions of Justice White and Justice Douglas in *Pennington*.

B. The Sixth Circuit and the District Court Properly Held That The Meaning of PWC Was for the Jury.

The PWC is set forth at 1931-7.

We submit that the following statement from the opinion of the Sixth Circuit is correct:

> "UMW contends that the protective wage clause is clear and unambiguous and therefore the construction of the clause is for the court and not the jury. *Dale v. Preg*, 204 F.2d 434 (9th Cir. 1953). The trouble with this contention is that every court which thus far has undertaken to construe the clause has held it to be ambiguous. Judge Wilson so stated in *Ramsey* (265 F. Supp. 388 at 412), and in the present case. Judge Taylor in *Pennington* said: 'The language in Paragraph A may not be as clear as it might be.' 257 F. Supp. 815 at 862. On appeal, we held in *Pennington*: 'The Protective Wage Clause is capable of two reasonable constructions ...' 400 F.2d at 814.
>
> "Whether the terms of the contract are ambiguous is a question of law for the court to determine. *Steele v. McCargo*, 260 F.2d 753 (8th Cir. 1958). When the court has determined that the contract is ambiguous the terms of the contract are to be determined by the jury if the case is tried by a jury, or by the court if the case is tried by a court. Evidence of the surrounding circumstances and the practical construction of the parties is admissible to aid in its interpretation.

United States v. Continental Oil Co., 364 F.2d 516 (10th Cir. 1966); *Steele v. McCargo, supra*; *Hawkins v. Frick Reid Supply Corp.*, 154 F.2d 88 (5th Cir. 1946)."

The foregoing cases also support the proposition that if a contract is obscure or ambiguous in its terms, extrinsic evidence as to the surrounding circumstances, including the practical construction given by the parties, may be received in aid of its interpretation.

The principal point in UMW's argument is that courts have applied a rule that the law favors the construction that does not result in a violation of law. But this is only one of a number of rules of construction.

The trier of fact does not get to the rule that favors construction resulting in legality until he applies other rules that have more to do with the central issue of what the parties actually intended—such as the necessity of examining the entire contract and not just one part, and the circumstances surrounding the making of the agreement, and the practical construction of the agreement by the parties who made it.

Thus, the primary rules of construction of ambiguous writings requires an examination of surrounding circumstances and practical construction by the parties. It is when these basic rules fail to come up with an answer that the "secondary" rules—such as that favoring a lawful result—come into play. *Restatement of Contracts*, Secs. 230, 235, 236.

UMW seems to place next heaviest reliance upon what *UMW's witnesses said in this case* that the PWC meant.

It must be said that the resort to "practical construction by the parties" means an examination of their over-

all conduct while working in harmony under the terms of the agreement—not what they say it means when disagreement arises and self interest impels one or the other to take a particular position. (17 Am. Jur. 2d 683-5, Contracts, Section 274)

In line with this is the rule that "oral statements of the parties of what they intended it to mean" is the one thing that cannot be considered in interpreting writings, *Restatement of Contracts*, Section 230.

So the denials and the explanations about PWC by UMW witnesses in this case are not entitled to the controlling weight ascribed by UMW. *To the contrary, they should be given no weight under applicable rules.*

C. The Sixth Circuit Properly Held That the District Court's Instructions on the Effects and Consequences of the Conduct of the Alleged Conspirators Did Not Constitute Prejudicial Error.

UMW contends that at some parts of the charge the jury would be permitted to consider effects and consequences of UMW conduct in considering the question of conspiracy. Many cases have said that looking at course of conduct is the only way that conspiracy can be proved in the normal Sherman Act case. In seeking to remove this case from the normal rule UMW relies upon the Supreme Court decision in *Pennington* that a union may vigorously pursue wage uniformity. But the Court did not add the words "even though it stops bargaining unit by unit and destroys most of the competitors in the industry and unreasonably restrains trade, giving tremendous benefits to the big companies with whom it fixes the contracts." The Court reconciled these two concepts in its footnote 2 which reads:

"Unilaterally, and without agreement with any employer group to do so, a union may adopt a uniform wage policy and seek vigorously to implement it even though it may *suspect* that some employers cannot effectively compete if they are required to pay the wage scale demanded by the union. The union need not gear its wage demands to those which the *weakest units* in the industry can afford to pay. Such union conduct is *not alone sufficient evidence* to maintain a union-employer conspiracy charge under the Sherman Act. There must be additional direct or indirect evidence of the conspiracy. There was, of course, other evidence in this case, but we indicate no opinion as to its sufficiency." (Emphasis supplied.)

UMW contends a union can go on making national contracts with the dominant company until there is no one else left in the industry — regardless of effects, regardless of reasonableness.

Outside of predatory pricing by union-owned companies, *Pennington* relied upon the effects and consequences of the national bargaining on a single small marginal coal producer. There was apt reason for the language used by the Court in that second footnote on the first record. The present record deals with the most modern and largest producer in Southern Tennessee and this record goes far beyond *suspected* effects upon the *weakest* units. The undisputable statistical proof warrants, indeed demands, a finding that the combination is pressing printed forms of contract upon an industry which, all joined together (omitting the two largest companies), loses millions of dollars a year after paying the extravagant costs required in the printed forms, including over $100,000,000.00 simply as Welfare fringe benefits (while the two largest companies prosper).

The second footnote to the *Pennington* opinion does not say that *suspected* effects on the *weakest* units of an industry are immaterial on the question of conspiracy or that they may be ignored. Rather, it says such proof "is not alone sufficient evidence." The inference is that *suspected* effects on, not only the *weakest*, but some of the stronger units, or well known effects on even the weakest units *may* be alone sufficient. But certainly the inference from the footnote is strong that obvious, well known, well recognized effects on the great bulk of an industry is alone sufficient proof that the agreements which the union has made with the same group of employers over a period of a decade violate the antitrust law.

D. The Sixth Circuit Properly Held That the District Court's Instructions on the Applicable Standard of Proof Did Not Constitute Prejudicial Error.

We submit that the District Court's instructions on "clear proof" under Section 6 of the Norris-LaGuardia Act leaned far over in defendant's favor and went far beyond anything that the act contemplates. The opinion of the Sixth Circuit refers to the many times that "clear proof" rule was stressed and stretched in the instructions. The Sixth Circuit points out that plaintiffs might well have objected to the way the District Court over emphasized the rule.

Clearly, if this jury charge can be said to be unfair to defendant on burden of proof, then Section 6 of Norris-LaGuardia must be considered for all practical purposes as being an outright prohibition of any suit at all. Congress surely did not intend for it to be that.

E. The Sixth Circuit Was Correct in Holding There Was No Error in the District Court's Instructions to the Jury.

The contentions of the UMW under the fifth question are really a repetition of arguments that pertain to the first four questions discussed above.

F. UMW is Clearly Wrong as to the Scope and Meaning of the Verdict on Special Issue 3; It Would Serve No Good Purpose to Review the Decisions Below on This Point.

As shown in our statement of the case UMW sought to have the Court submit only the general issue. The Court wanted special issues on several things; one particular point he mentioned concerned pricing policies of West Kentucky Coal Company. But UMW objected. The Court was going to get up special issues and submit them to counsel. Time for argument came and the special issues were not ready. Counsel agreed to go ahead and argue and let the Court submit the Special Issues later. Argument was aimed at the General Verdict Form and covered a predatory conspiracy with PWC argument mixed in. After argument the Court distributed the special issue form and submitted it to the jury along with the General Verdict Form. The charge of the Court covers a predatory conspiracy as well as PWC.

It cannot be logically contended that the second special issue covered the broad issue of predatory conspiracy or that the case submitted to the jury under the General Verdict Form was confined to the meaning of PWC. The contention is obviously too strained.

We submit the following statement of the Trial Court, quoted by the Sixth Circuit, is correct, sound and dispositive of this contention:

"In considering the general verdict, the Court must look to all of the evidence and not merely the evidence in regard to the P.W.C. Moreover, in arriving at their general verdict the jury was charged with the duty of determining whether the defendant had committed an antitrust violation during the period of September 24, 1959, through the end of 1963, the period of limitations of this lawsuit. Evidence of conduct prior to September 24, 1959, was relevant only as it may or may not have reflected upon what the defendant did or refrained from doing during the period following September 24, 1959. Thus, neither Special Issue No. (2), wherein the jury found the defendant had not conspired prior to the 1958 Amendment with any coal operators to impose the conditions of the National Bituminous Coal Wage Agreement upon other coal operators, nor Special Issue No. (3), wherein the jury found that the defendant intended by the language of the P.W.C. to commit itself to impose the National Bituminous Coal Wage Agreement on all coal operators with whom it thereafter negotiated, would necessarily be determinative of the general verdict on the issue of liability. The Court is accordingly of the opinion that there does exist substantial evidence in the record in support of the jury verdict on the issue of liability." (121)

G. The Sixth Circuit Properly Held That the Damages Awarded in the District Court Was Supported by Substantial Evidence.

UMW does not challenge damages generally, but only those damages attributable to the period of the strike starting in December, 1962, and continuing through the end of the period of the case, December 31, 1963.

UMW's first position under this is that the strike resulted from a refusal of Grundy to bargain. This is an inaccurate characterization of the true situation. Grundy's first attempt to open production in 1960 came only after long, frustrating efforts by the parent company to negotiate with the defendant with rejection of those efforts. The second attempt in 1962, after the resignation of Allen & Garcia, opened up with a meeting in Mr. Harwood's office in Nashville, described by the defendant's District President (1091, 1122), in which Grundy officers pointed out that it was impossible to sign the national contract and the union would have to allow other terms if a contract were signed. After all, this was after a year and a half of failure in trying to work the property under the national contract under supervision of Allen & Garcia, a nationally prominent engineering firm.

The Company received not the least bit of reciprocation or encouragement from the union with respect to this completely unavoidable and reasonable proposition. The union demanded the national contract or nothing. As a matter of fact that is all UMW could do under PWC. The union maintained an NLRB petition for recognition election creating a legal snarl-up over the appropriateness of Grundy bargaining through a representative (Sewanee) representing a different bargaining unit (708). But, Grundy's officers helped out in the honest efforts of Sewanee Association to bargain (694), and Grundy's Mine No. 11 was one of the types of mines covered in the Sewanee proposals to the union (1107). It is unreasonable to expect any more from Grundy. At least the jury thought so and this was certainly a reasonable conclusion.

In the second place, UMW claims that plaintiffs' damages for this period is premised "on the theory that Consolidated and Grundy would have earned the amounts

claimed had they been privileged to pay in wages and benefits what they were prepared, unilaterally, to establish, but which neither UMW or its members were willing to accept."

But this is not an accurate analysis of the theory of the case or of damages. The theory of the case is that the proximate cause of damages is the conspiracy preventing bona fide wage negotiation, contrary to the whole intendment and purpose of National Labor Policy, and the cause of damage is not the unwillingness of the men themselves to negotiate a practical set of conditions (there were delegations from local unions, for instance, going to district headquarters seeking to get higher authority to allow practical contracts in the field (280-281, 504), and local unions all over were sending resolutions to the international's conventions to get wage classification rather than flat wage increases, without success (395)). The proximate cause was a question for the jury. The amount of damage was likewise for the jury and the jury could reasonably consider the profit-making ability of TCC *before* and *after* the damage period when plaintiffs *did* have employees working for them for wages those employees were willing to accept, but when a strike to force the national contract was not being stirred on by international funds and editorials.

We do not see that the remand by the Supreme Court of the *Pennington* case for a second trial on liability and damages could have contemplated any impropriety or weakness in these theories or would afford room for successful argument of UMW's present contention in this regard.

H. The Sixth Circuit and the District Court Properly Overruled Petitioner's Challenge of the Jury Panel.

The Trial Court overruled UMW's motion to strike the jury panel, filing an opinion that is in the appendix (76-92). That opinion is so thorough and completely responsive to the contentions raised by UMW under this question that we have concluded it would serve no worthwhile purpose to seek to improve upon the analysis contained in that opinion.

UMW's contention is: " . . . that on the April, 1967, panel there was a dramatic under representation of craftsmen, service workers and laborers as compared with the professional and managerial classes."

We say categorically that this allegation simply is not true. The specific ground of the motion relied on here by UMW is that there was under representation of "wage earners, members of labor organizations and people who belong to the working or employee part of the population." (75)

UMW relies on census statistics but the Court pointed out that UMW was not using the appropriate comparisons but was only using statistics of the wage earner group as compared to the management and executive group, without comparing the wage earner group with the entire adult population from which the jury is drawn (78).

The UMW classification of the jury panel as to economic position is challenged by the jury commission analysis (78), and the analysis made by the Court attached to the opinion (83-92). There is no evidence to dispute the findings of the Court in this regard.

The Trial Court used the "Key Man" system of jury selection (this was before the recently adopted jury se-

lection rules). The Sixth Circuit's opinion points out that numerous cases have upheld the key man system.

However, just to make sure that there is no misunderstanding on the real facts in this assault upon the system of jury selection as practiced in this District Court, we feel compelled to point to the voir dire in this case which would undisputably be the best evidence of the character of the jury panel, since the only previous basis of making a comparison was from very sketchy information on the juror record. As UMW acknowledged in its footnote of its brief in the Sixth Circuit (P. 90) ". . . the cryptic occupational descriptions on the panel list may leave some room for argument." In answering questions on a form a prospective juror may be considerably more vaguely expansive as to his job than when asked specific questions on voir dire in the courtroom.

The voir dire covered a substantial part of the panel list and is in the appendix (1833-1878).

The voir dire establishes that the jury that decided the case was composed of one local union officer (Duncan), three other union member wage earners (Chambers, Bates and Roberson), a former local union officer (Davis, now a foreman), a former union member who is still a millwright (Nelson), a farmer (Corvin), a federal government employee who was a former school teacher (Burnett), a retired school teacher (Nix), a salesman (Hammel), and two housewives (Hall, whose husband is a farmer, and Allen, whose husband is a mill credit manager). Obviously, the wage earner "class" was fairly represented.

As to the members of the jury panel list who were examined and excused during the course of the voir dire, it is to be observed that plaintiffs used only one peremptory challenge and that was on a member of UMW District 50

(Bennett) when plaintiffs' challenge for cause was overruled. *UMW challenged peremptorily a union member wage earner* (*Hammond*), a salesman (Gladish) and an engineer (Greer). *UMW made one challenge for cause, a union member wage earner* (Lawhorn, who had consulted one of counsel for plaintiffs about an auto case). One union member wage earner was excused by the Court because he said his union "did not see eye-to-eye with UMW" (DeVault). One wage earner (a chair maker, Kennedy) became sick during the trial and was replaced by the alternate, Nix. The economic position of the few other excused panel members was not developed.

This is the picture as to what "classes" were represented on the panel list when those on the list were submitted to specific questioning. *We say flatly that UMW's assault on the jury selection processes of the Court are untrue and unfounded.*

CONCLUSION

For the reasons discussed above, Respondents submit that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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